

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

KEVIN LENAHAN, PETER AUBRY,
JR.,

Plaintiffs,

vs.

SANTA ROSA RANCHERIA TACHI
TRIBE dba PALACE INDIAN
GAMING CENTER,

Defendant.

1:05-cv-00608-AWI-SMS

**ORDER TO SHOW CAUSE (1) WHY
CASE SHOULD NOT BE DISMISSED
FOR LACK OF PROSECUTION, AND
(2) WHY SANCTIONS SHOULD NOT
BE IMPOSED FOR FAILURE TO
REGISTER FOR CM/ECF PURSUANT
TO LOCAL RULES 11-110 AND
5-133(d) (3)**

Date: 10/7/05

Time: 9:30 a.m.

Ctrm: Four

Judge: Hon. Sandra M. Snyder,
U.S. Magistrate Judge

This matter came on regularly for a Mandatory Scheduling Conference on August 23, 2005 at 9:15 a.m. in Courtroom No. 4 before the Honorable Sandra M. Snyder, United States Magistrate Judge, pursuant to the court's Order Setting Mandatory Scheduling Conference, filed May 6, 2005 (doc. 3), the same date plaintiffs, through counsel, filed their complaint (doc. 1). Plaintiffs, through counsel, DID NOT appear or otherwise contact the court. It is unknown to the court if defendant has been served as an appearance has not yet been made.

1 Further, a Notice of Electronic Filing Requirement (doc. 4),
2 filed May 10, 2005, was issued to plaintiffs' counsel, William B.
3 Palmer, for his failure to register for the court's Case
4 Management/Electronic Case Filing (CM/ECF) system as required by
5 this Court's standard Scheduling Conference Order, and,
6 specifically, No. 15 thereof, as follows:

7 15. Compliance with Electronic Filing Requirement:

8 On January 3, 2005, the United States District Court for
9 the Eastern District of California became an electronic case
10 management/filing district (CM/ECF). Unless excused by the Court,
11 or by Local Rule, attorneys shall file all documents electronically
12 as of **January 3, 2005** in all actions pending before the court.
13 While Pro Se Litigants are exempt from this requirement, the court
14 will scan in all documents filed by pro se litigants, and the
15 official court record in all cases will be electronic. Attorneys
16 are required to file electronically in pro se cases. More
17 information regarding the Court's implementation of CM/ECF can be
18 found on the court's web site at www.caed.uscourts.gov, including
19 the Court's Amended Local Rules effective January 3, 2005, the
20 Court's CM/ECF Final Procedures, and the Court's CM/ECF User's
21 Manual.

22 While the Clerk's Office will not refuse to file a
23 proffered paper document, the Clerk's Office will scan it and, if
24 improperly filed, notify the Court that the document was filed in
25 an improper format. An order to show cause (OSC) may be issued in
26 appropriate cases regarding an attorney's disregard for the
27 requirement to utilize electronic filing, or other violations of
28 these electronic filing procedures. See L.R. 11-110 & 5-133(d)(3).

1 If counsel has not already done so, counsel **must** register
2 for CM/ECF as soon as possible. On-line registration is available
3 at www.caed.uscourts.gov. Once registered, counsel will receive a
4 login and password in approximately one (1) week. Counsel must be
5 registered to file documents on-line. See L.R. 5-135(g). Counsel
6 are responsible for knowing the rules governing electronic filing
7 in the Eastern District. Please review the Court's Local Rules
8 effective January 3, 2005, available on the Court's web site.

9 Therefore, a review of the instant action indicates that
10 plaintiffs, through counsel, have not diligently prosecuted this
11 case. The court possesses the discretionary authority to dismiss
12 an action based on plaintiffs' failure to prosecute diligently.
13 Fed. R. Civ. P. 41(b); Schwarzer, Tashima & Wagstaffe, Fed. Civ.
14 Proc. Before Trial ¶ 16:431 (1997). Unreasonable delay by
15 plaintiffs is sufficient to justify dismissal, even in the absence
16 of actual prejudice to defendants (Moore v. Telfon Communications
17 Corp., 589 F.2d 959, 967-68 (9th Cir. 1978)) since a presumption of
18 injury arises from the occurrence of unreasonable delay. Fidelity
19 Philadelphia Trust Co. v. Pioche Mines Consol., Inc., 587 F.2d 27,
20 29 (9th Cir. 1978). Plaintiffs then have the burden of showing
21 justification for the delay and, in the absence of such showing,
22 the case is properly dismissed for failure to prosecute. Nealey v.
23 Transportation Maritima Mexicana, S.A., 662 F.2d 1275 (9th Cir. 1980).

24 **IT IS HEREBY ORDERED:**

25 1. That this matter be set for hearing on October 7, 2005 at
26 9:30 a.m. in Courtroom No. 4 before the Honorable Sandra M. Snyder,
27 United States Magistrate Judge, for consideration of dismissal for
28 plaintiffs' lack of prosecution.

2. If plaintiffs, through counsel, have any reasons why this action should not be dismissed, they shall be submitted by sworn declaration of facts on or before **September 19, 2005**, to which a supporting memorandum of law may be appended, to include:

(A) an explanation of the lack of activity in this case;
and,

(B) shall list each specific step plaintiffs, through counsel, plan to take to prepare this case for trial.

3. Additionally, if plaintiffs, through counsel, have any reasons why they should not be sanctioned for failure to register for CM/ECF, they shall also be submitted by sworn declaration of facts on or before **September 19, 2005**.

Plaintiffs, through counsel, are advised that failure to comply with and/or respond to this Order will result in Findings and a Recommendation to the District Court that this action be dismissed.

IT IS SO ORDERED.

Dated: August 24, 2005
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/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE